

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND ALFORD BRADFORD,

Plaintiff,

No. CIV S-05-0862 FCD DAD P

vs.

N. GRANNIS,

Defendant.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action seeking relief under 42 U.S.C. § 1983. By order filed June 28, 2005, plaintiff's complaint was dismissed with leave to amend. Plaintiff's amended complaint is before the court.

The court is required to screen every complaint brought by a prisoner seeking relief against a governmental entity or an employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint if the prisoner has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may dismiss a claim as frivolous where it is based on an indisputably

meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989); Franklin, 745 F.2d at 1227.

A complaint should be dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in support of the complaint that would entitle him to relief. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this standard, the court accepts as true the allegations of the complaint in question. See Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976). The court construes the pleading in the light most favorable to the plaintiff and resolves doubts in the plaintiff's favor. See Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

The Civil Rights Act under which this action was filed provides as follows:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute requires an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by the plaintiff. See Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

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1 In the present case, plaintiff is confined at California State Prison - Corcoran. The  
2 sole defendant is N. Grannis, Chief of Inmate Appeals Branch in Sacramento. In his amended  
3 complaint, plaintiff again alleges that the defendant failed to respond to plaintiff's emergency  
4 medical appeal within time constraints and thereby demonstrated deliberate indifference to  
5 plaintiff's serious medical needs, prevented plaintiff from receiving immediate and adequate  
6 medical care, and intentionally delayed plaintiff's ability to proceed to court and litigate his  
7 medical claims. Plaintiff again seeks damages and an injunction requiring defendant Grannis to  
8 provide plaintiff with a wheelchair for his permanent use.

9 Although plaintiff now claims that the appeal he submitted to the third level was  
10 actually the original appeal, contrary to the allegations of his previous pleading, plaintiff does not  
11 allege facts showing that the alleged delay in processing his appeal at the director's level caused  
12 any delay in receiving adequate medical care at Corcoran State Prison. Moreover, the allegations  
13 of the amended complaint and the attached exhibits show that there is no factual basis for  
14 plaintiff's contention that his appeal was entitled to emergency processing at the director's level.  
15 Plaintiff's appeal No. 03257, requesting a wheelchair, was submitted on July 28, 2004, according  
16 to plaintiff, or August 17, 2004, according to the informal response to order to show cause filed  
17 on March 4, 2005, in the Fifth Appellate District of the California Court of Appeal; plaintiff's  
18 appeal was denied at the first level on October 28, 2004; it was denied at the second level on  
19 November 24, 2004; and it was submitted to the director's level on December 1, 2004. Plaintiff  
20 complains that he did not receive a decision on his emergency appeal within five working days.  
21 However, it is evident that the appeal was not accepted for emergency processing. If it had been,  
22 the first level of review would have been waived, the response at the second level would have  
23 been due in five working days, and, after denial at the second level, the appeal would have been  
24 faxed by the prison appeals coordinator to the director's office for a third level decision within  
25 five working days. The history of plaintiff's appeal shows that it was not accepted as an  
26 emergency appeal and the third-level response was not due within five working days.

1 Plaintiff's amended complaint is defective in other ways. The pleading does not  
 2 allege facts showing an actual injury to plaintiff's right of access to the courts. Nor does the  
 3 amended complaint allege facts showing that defendant's processing of the third level appeal  
 4 served to deny plaintiff access to medical care or delay plaintiff's medical treatment. Plaintiff's  
 5 request for a wheelchair had been reviewed and rejected by medical staff and by institutional  
 6 staff months previously. Finally, although plaintiff was advised that any injunctive relief sought  
 7 in the amended complaint must be relief within the scope of the defendant's authority, plaintiff  
 8 has again requested an order requiring the appeals coordinator to provide him with a wheelchair.

9 The court finds that plaintiff's claims are factually and legally frivolous and fail to  
 10 state any claim upon which relief can be granted. Plaintiff has failed to cure the defects of his  
 11 complaint.

12 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed  
 13 with prejudice on the grounds that plaintiff's claims are factually and legally frivolous and fail to  
 14 state any claim upon which relief may be granted.

15 These findings and recommendations will be submitted to the United States  
 16 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
 17 twenty days after being served with these findings and recommendations, plaintiff may file  
 18 written objections with the court. A document containing objections should be titled "Objections  
 19 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
 20 objections within the specified time may, under certain circumstances, waive the right to appeal  
 21 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 DATED: September 15, 2005.

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 25 DALE A. DROZD  
 26 UNITED STATES MAGISTRATE JUDGE

25 DAD:13  
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